

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1685

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 74-1685

UNITED STATES OF AMERICA,

Appellee,

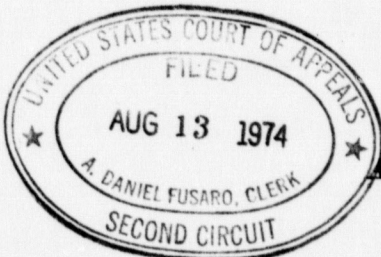
—v.—

JOSEPH CHARLES MANGER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX



DANIEL P. HOLLMAN
27 East 39th Street
New York, New York 10016
Tel. No. (212) MU 9-1844
*Attorney for Defendant-Appellant
Joseph Charles Manger*

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United States District Court

EASTERN DISTRICT OF NEW YORK

THE UNITED STATES,

Appellee,

—v.—

JOSEPH CHARLES MANGER and SPIRO P. CHRISTOS,
Defendants.

Docket Entries

<i>Date</i>	<i>Proceedings</i>
6-20-72	—Before ROSLING, J.—Indictment filed.
6-26-72	—Before RAYFIEL, J.—Case called—Defts & counsels present—deft arraigned and each enters a plea of not guilty.
6-29-72	—File 72 M 1053 inserted into criminal file.
7- 6-72	—Govts Notice of Readiness for Trial filed.
9-12-72	—Notice of Appearance filed (Manger)
9-20-72	—Before RAYFIEL, J.—Case called. J. LaRossa, counsel for deft MANGER, present. Gov't applied for the issuance of a bench warrant. Application granted./Bench warrant issued for deft MANGER.
9-21-72	—Before RAYFIEL, J.—Case called (in chambers). —Deft MANGER & counsel James LaRossa by Gerald Shargel present.—Govt applied to increase bail. Govt's application granted to extent that deft's personal recognizance bond is restored as bail, to be supported, however, by deft's father posting deed to home, as additional security, by 4:30 P.M. on 9-22-72.

1

Docket Entries

- | <i>Date</i> | <i>Proceedings</i> |
|-------------|--|
| 10- 4-72 | —Notice of motion filed ret 10-13-72 for an order of suppression re deft MANGER. Memorandum of law filed in support. |
| 1-21-74 | —Before JUDD, <i>J.</i> —case called—defts not present—counsels present—case adjd to 2-25-74 for trial. |
| 2-25-74 | —Before JUDD, <i>J.</i> —case called—deft MANGER & counsel present—deft CHRISTOS not present—counsel present—Motion by Mr. Chrein for deft CHRISTOS for a severance is granted—motion by deft MANGER to dismiss the indictment is denied—case respectfully referred to Judge Costantino for trial. |
| 2-25-74 | —Before COSTANTINO, <i>J.</i> —case called—deft & atty present—motion to dismiss argued and denied—suppression hearing ordered & Begun. Hearing dismiss argued and denied—suppression hearing ordered & Begun. Hearing contd to 2-26-74. |
| 2-26-74 | —Before COSTANTINO, <i>J.</i> —case called—deft & counsel G. Shargel present—trial contd—trial to be contd on Feb. 27, 1974. |
| 2-27-74 | —Before COSTANTINO, <i>J.</i> —case called—deft & counsel present—adjd to March 4, 1974 for trial. |
| 3- 1-74 | —By COSTANTINO, <i>J.</i> —Memorandum & Order filed—the Court finds that the cocaine was unlawfully seized and holds that it too should be suppressed (MANGER) |
| 3- 5-74 | —Before COSTANTINO, <i>J.</i> —Case called—deft & atty G. Shargel present—Trial ordered and Begun—Jurors selected and sworn—Trial continued to March 7, 1974. |

Docket Entries

- | <i>Date</i> | <i>Proceedings</i> |
|-------------|--|
| 3- 7-74 | —Before COSTANTINO, J.—case called & trial adjd to 3-11-74. |
| 3-12-74 | —Before COSTANTINO, J.—case called—deft CHRISTOS & counsel present—Mr. Chrien of Legal Aid—deft arraigned and after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 3 after withdrawing his plea of not guilty—sentence adjd without date—bail continued. |
| 3-11-74 | —Before COSTANTINO, J.—case called—deft MANGER & counsel Gerald Shargel present—trial resumed—trial contd to 3-12-74. |
| 3-11-74 | —Before COSTANTINO, J.—case called deft MANGER & counsel present—trial resumed—Trial contd to Mar. 13, 1974. |
| 3-13-74 | —Before COSTANTINO, J.—case called — deft Manger & counsel present—trial resumed—Motion for Judgment fo Acquittal denied—Trial contd to March 14, 1974. |
| 3-15-74 | —Two stenographers transcripts filed (one dated Mar 11 and one dated Mar. 12, 1974) |
| 3-14-74 | —Before COSTANTINO, J.—case called—deft & counsel present (Manger) trial resumed—deft moves for judgment of acquittal—motion denied —Govt sums up—deft sums up—Judge charges Jury — Marshals sworn — Order of sustenance signed—Jury retires to deliberate at 3:20 PM—Order of Sustenance signed (Supper) Jury returns at 8:00 PM and finds the deft guilty on each of counts 1, 2 & 3—trial concluded—Jury polled and discharged—bail contd—sentence adjd without date. |

Docket Entries

<i>Date</i>	<i>Proceedings</i>
3-14-74	By COSTANTINO, J.—Order of sustenance filed (Supper)
3-20-73	Stenographers transcript filed dated March 14, 1974 (MANGER)
3-25-74	Govts Memorandum filed in opposition to motion to dismiss (Manger)
3-25-74	3 stenographic transcripts filed (pgs 1 to 205) (Manger)
3-26-74	2 stenographic transcripts filed, one dated March 11, 1974 and one dated Mar. 13, 1974 (MANGER)
5-10-74	Before COSTANTINO, J.—case called — deft MANGER & counsel Gerald Shargel present— deft sentenced to imprisonment for 5 yrs on count 1 and 2 yrs special parole pursuant to 18:4208 (a) (2) and 5 years on counts 2 and 3 to run concurrently. Bail set at \$5,000 surety bond; time extended to May 13, 1974 for bond and deft placed in custody of his parents. Deft advised of his right to appeal.
5-10-74	Judgment & Commitment filed—certified copies to Marshal (MANGER)
5-10-74	Before COSTANTINO, J.—Case called—Sentence adjd to 5-24-74 at 10:00 A.M. (CHRISTOS)
5-13-74	Notice of Appeal filed (MANGER)
5-13-74	Docket entries and duplicate of Notice mailed to the C of A together with Form A (MANGER)

Indictment

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

72 Cr. 716

UNITED STATES OF AMERICA,

Appellee,

—against—

JOSEPH CHARLES MANGER and SPIRO P. CHRISTOS,

Defendants.

COUNT ONE

The Grand Jury charges:

On or about the 17th day of May 1972, in the Eastern District of New York, the defendant, Joseph Charles Manger, and the defendant, Spiro P. Christos, knowingly and intentionally did distribute approximately 9,360 tablets containing amphetamine sulfate, a Schedule II controlled substance. (Title 21, United States Code, Section 841(a) (1); Title 18, United States Code, Section 2).

COUNT TWO

On or about the 17th day of May 1972, in the Eastern District of New York, the defendant, Joseph Charles Manger, and the defendant, Spiro P. Christos, knowingly and intentionally did possess with intent to distribute approximately 14,000 tablets containing amphetamine sulfate, a Schedule II controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

*Indictment***COUNT THREE**

On or about the 17th day of May 1972, in the Eastern District of New York, the defendant, Joseph Charles Manger, and the defendant, Spiro P. Christos, knowingly and intentionally did possess with intent to distribute approximately 28.98 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 17th day of May 1972, in the Eastern District of New York, the defendant, Joseph Charles Manger, knowingly and intentionally did possess with intent to distribute approximately 8.7 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

COUNT FIVE

On or about the 17th day of May 1972, in the Eastern District of New York, the defendant, Joseph Charles Manger, knowingly and intentionally did possess with intent to distribute approximately 35 tablets containing Lysergic Acid Diethylamide, a Schedule I controlled substance.

(Title 21, United States Code, Section 841(a)(1)).

A TRUE BILL

.....
Foreman

.....
United States Attorney
Eastern District of New York

Judgment of Conviction

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

72 Cr. 716

UNITED STATES OF AMERICA,

Appellee,

—v.—

JOSEPH CHARLES MANGER,

Defendant.

On this 10th day of May, 1974 came the attorney for the government and the defendant appeared in person and with counsel

IT IS ADJUDGED that the defendant upon a verdict of guilty has been convicted of the offense of violating T-21, U.S.C. Sec. 841(a)(1) and T-18, U.S. Code, Sec. 2, in that on or about May 17, 1972, the defendant, did knowingly possess with intent to distribute and did distribute a quantity of amphetamine sulfate tablets and did possess with intent to distribute approximately 28.98 grams of cocaine hydrochloride, a Schedule II controlled substance as charged in counts 1, 2 & 3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

Judgment and Conviction

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years on count 1 and 3 years special parole pursuant to T-18, U.S. Code, Sec. 4208(a)(2) and 5 years on counts 2 and 3 to run concurrently, with count 1. Bail set at \$5,000 surety bond.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

MARK A. COSTANTINO,
United States District Judge.

The Court recommends commitment to

LEWIS ORGEL,
Clerk.

A True Copy. Certified this 10th day of May, 1974.

(Signed) LEWIS ORGEL,
Clerk.

(By) HAROLD DEANGELIS,
Deputy Clerk.

Excerpts From Trial Transcript—Decision of Trial Judge Limiting Cross-examination

(55)

Mr. Shargel: Your Honor, last night in going over the 3500 material, I noticed from one item which was relative to Mr. Christos, which actually is a report of Agent Schnepfer that there was an original handwritten statement of a statement furnished by Mr. Christos and that was not turned over to me.

Mr. Behar: Your Honor, I'm informed by Agent Schnepfer that the handwritten statement is an exact copy of the typewritten statement which was included in the report which I turned over to Mr. Shargel yesterday.

Mr. Shargel: I'll accept that representation.

The Court: All right.

Mr. Behar: We have not the other problem, your Honor, of Mr. Christos's prior——

The Court: Yes, the misdemeanor, gun conviction.

Mr. Behar: It wasn't a gun. It was a knife, your Honor.

The Court: Knife. Knife conviction.

Mr. Behar: The conditional discharge.

The Court: Question of how does it go to the truth and veracity.

Mr. Shargel: Well, I have—her is my position.

(156)

Ordinarily that might be closed question. But we have some different circumstances here, I respectfully submit.

First, it should be clear that this man was charged with a felony and I imagine as a result of plea-bargaining——

The Court: I don't know.

Mr. Shargel: (Continuing)—it was——

The Court: I can't assume that.

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

Mr. Shargel: He was charged with a felony. He did plead guilty and was convicted of a misdemeanor.

Now I would like to know whether the Government; because this was after his arrest, aided him in securing that misdemeanor, number one. And number two, here is a situation where after a man is arrested, after a man becomes a cooperating witness, he goes out and commits another crime. If he's going to testify that he is——

The Court: He has a knife. Not a—a crime of similar nature.

Mr. Shargel: Not a similar nature but I think it goes directly to his character.

(57)

The Court: But his character—it's a question of truth and veracity. Nothing to do with crime of similar—dissimilarity of crimes.

Mr. Shargel: But Judge, I don't think there is a classic situation where the crime preceded the arrest.

Here he's a cooperating individual. Implicit in that is: I'm going to cooperate with the Government now and be a good citizen; tell the truth. And he goes out and commits another crime.

Mr. Behar: You Honor, I think Mr. Shargel has a problem with that because he was arrested on 10/16/71, before the crime in question here was committed.

The Court: On that one? On the knife charge?

Mr. Behar: On the weapon.

Mr. Shargel: That's my mistake as I look at the sheet.

Mr. Behar: The arrest was before.

The Court: Prior?

Mr. Shargel: But it is interesting, Judge, that

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

the plea did not come until after.

The Court: Well, the——

Mr. Shargel: I'd like to know if the Government helped him.

(158)

The Court: There could have been a number of reasons for that delay—lack of speedy trial.

Mr. Behar: I think—I'm sorry.

Mr. Shargel: I am right. The point is this: What benefits did he receive from testifying here today? The Federal agents go out and help him in securing a misdemeanor out in Nassau County?

That's the question that is presented by this arrest and subsequent conviction.

The Court: Can you place any representation on the record as to that?

Mr. Behar: Can I have just one moment, your Honor?

The Court: Sure.

Mr. Behar: Your Honor, the Government is prepared to make a representation that Federal agents had to contact with the Nassau County authorities leading to Mr. Christo's guilty plea on the misdemeanor and/or the conditional discharge which followed a month and a half later.

Mr. Shargel: Well, I am—I can make my record, I respectfully suggest, that this is limiting the scope of my cross-examination.

It may have been that his attorney advised the Judge that this man is a cooperating witness with the Federal Government. (159) I don't know the answers to these questions. And I respectfully submit that this is limiting the scope of my cross-examination.

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

The Court: I can't see what probative value it has whatsoever, except to show the man committed a crime prior to being arrested for this crime. That's all it would show and nothing to do with truth or veracity.

Carrying a knife has nothing to do with truth or veracity or a conditional discharge. A misdemeanor has nothing to do with it. I will deny it.

Mr. Behar: Thank you, your Honor.

The Court: I will deny it.

Mr. Shargel: My exception, your Honor.

The Court: All right.

Cross-examination by Mr. Shargel:

(100)

Q. Where is Loudonville, New York?

Mr. Behar: I will object.

The Court: I didn't hear what you said.

Q. Where is Loudonville, New York?

Mr. Behar: Your Honor, I will request a side bar.

The Court: I do not know what this is supposed to be. I don't know.

(101)

(The following conference took place between the Court and counsel at the side bar):

Mr. Behar: I think, your Honor, Mr. Shargel is going into an area which is irrelevant, immaterial, and certainly something——

The Court: Is it this one (indicating)?

Mr. Behar: That was an arrest. It was not a conviction.

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

The Court: If it was an arrest you can't ask him.
What was the disposition?

Mr. Shargel: That is what I want to know. The
arrest was 1970. Do you know what the disposition
was?

Mr. Behar: The Nassau County Police Department and the agents of the BNDD have advised me
and I think this charge was dismissed—

The Court: Don't ask him unless you have something to offer to prove it.

Mr. Shargel: I would like to find out from the
defendant outside of the presence of the jury.

The Court: That's all right, surely.

(The following occurred in open court:)

The Court: All right, will the jury please step
(102) out for a moment?

(The jury thereupon retired from the courtroom.)

(The following occurred in the absence of the jury:)

Mr. Shargel: May I require, your Honor?

The Court: You may inquire as to that offer of
voir dire examination by Mr. Shargel.

Q. Mr. Christos, you were arrested on August 6, 1970,
is that correct? A. Yes, sir.

Q. That was in Loudonville, New York? A. Yes, sir.

Q. On—Am I pronouncing that right? A. Yes, sir.

Q. What county is that? A. I don't remember the
county.

Q. Is that upstate? A. It is upstate, New York.

Q. Upstate. And you were charged with criminal
possession of dangerous drugs in the 6th degree, were you
not? A. Yes, sir.

Q. You had another charge at that time, criminal possession of certain instruments? A. Yes.

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

(103)

Q. Incidentally, can you tell us what the instruments were? A. The instrument was pipes, brass pipes.

Q. Mr. Christos, what was the disposition of that charge? A. I was led to believe that it was dropped because I paid a fine.

Q. You paid a fine? A. For traffic violations, sir.

The Court: You paid a fine for a traffic violation? How did you do that?

Mr. Shargel: I don't know what they do in Loudonville. This is a drug charge.

The Court: Granted. I have got nothing to do with that.

The Witness: Can I clarify it?

The Court: Somebody should have called these people to find out. What I practiced law and I had a disposition I used to go to the court myself, look at the record, pull it out, go to the clerk, get it stamped and take it with me.

You want the judges to do this today. The judge wouldn't even move off the bench in those days.

Mr. Shargel: Judge, I wouldn't even know where to (104) find Loudonville, New York.

The Court: I can't help that. I don't know where it is either. It's not my case.

Mr. Shargel: The man paid a fine on this charge. It is a conviction.

The Court: All I know is, it is for a traffic violation now. What do you want me to do? Do you want me to say it is drugs?

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

By Mr. Shargel:

Q. Did you go before a magistrate? Was it a Judge just like Judge Costantino?

The Court: No, it wasn't. It was a justice of the peace up there.

The Witness: It was a justice of the peace.

The Court: They don't have to be lawyers in Loudonville. He probably came out of the living room and went downstairs to the cellar and held court.

The Witness: It was in his living room.

The Court: I refuse to accept that. They are not judges at all. I don't know what they call them.

Q. Did the justice of the peace ask you what you had done in relation to this charge? A. Yes.

Q. Did you at that time tell the justice of the peace about possession of dangerous drugs? Was it marijuana? (105) A. It was not anything. It was a crumpled up leaf that flew into the car, that the officer stopped me when I had only one light. He stopped me. He saw the leaf and he thought it was marijuana and took the leaf and sent it for chemical examination, which came up negative.

So that charge they dropped.

The charge about the instruments specifically states that instruments for the use of deadly drugs, which is a hypodermic needle, which is not what I had by any means, it was lamp parts. That is all they were, screwed together.

Q. This is what you told the magistrate or justice of the peace up there? A. A lot of this I found out about the charges, in other words, what an implement is, what it reads in the law.

*Excerpts From Trial Transcript—Decision of
Trial Judge Limiting Cross-examination*

Q. Did you enter a plea of guilty to—A. I pled guilty not to these charges. I pled guilty to the traffic violations.

Q. At that time what became of these charges? A. I had a Legal Aid lawyer there and he told me the charges were dropped because I sent him a check for, I think (106) it was \$250 and I didn't have to appear.

Mr. Shargel: Judge, it was a drug charge and he was fined.

The Court: He wouldn't get a fine on a drug charge. You know that. It is incarceration or probation, or conditional discharge. Even in the justice of the peace court there is no fine for drug charges, from what I know about State law. And I know a lot about it. I spent 14 years in State Court. If I don't know about those laws I am in real trouble.

The Witness: The charge for the drug was dropped.

Mr. Shargel: Note my exception.

The Court: You can have an exception. Unless you show he had a disposition of a conviction, you can't ask the question. I'm not going to pre-suppose on it.

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